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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re L.N., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

T.N.,

Defendant and Appellant.

G042428

(Super. Ct. No. DP-018414)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Jane Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J.  
Agin, Deputy County Counsel, for Plaintiff and Respondent.

T.N. (father) appeals from the court's order removing his daughter, L.N., from the home of her paternal grandparents and placing her in a foster home with her three older half-sisters.<sup>1</sup> We affirm.

## FACTS

In April 2009,<sup>2</sup> the Orange County Social Services Agency (SSA) filed a dependency petition pertaining to then 4-year-old L.N. and her three sisters: then 14-year-old A.A., 11-year-old L.K., and 8-year-old A.M. (L.N. is now five years old.) The petition, as later amended, alleged the children came within Welfare and Institutions Code section 300, subdivision (b) (failure to protect).<sup>3</sup> The amended petition's allegations included: Mother had been arrested for possession of a controlled substance paraphernalia. The home where the girls had lived with mother was "unsafe and unsanitary." Mother had been diagnosed with schizophrenia and failed to take her medicine. In addition, one of L.N.'s sisters had been diagnosed with schizophrenia, but mother failed to obtain medication and treatment for her.<sup>4</sup> Mother and father used methamphetamine numerous times and had histories of drug abuse. The children were "dirty and disheveled, with matted hair and tattered clothes." Mother and father had "a history of domestic violence" and failed to provide the children with a stable home,

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<sup>1</sup> References to "father" herein relate to T.N., not to the fathers of L.N.'s three half-sisters. In addition, for brevity, we refer to L.N.'s half-sisters as her sisters.

<sup>2</sup> All dates refer to the year 2009.

<sup>3</sup> All statutory references are to the Welfare and Institutions Code unless otherwise stated.

<sup>4</sup> The record reflects that two of L.N.'s sisters have been diagnosed with schizophrenia.

moving them between various residences that included motels. Mother failed to ensure the children attended school regularly.

SSA's detention report stated "the dentist found decay in 12 of [L.N.'s] 15 teeth." At the April 24 detention hearing, the children's counsel and mother asked the court to place the children together. The court ordered SSA to evaluate relatives for possible placement and to make best efforts to place the children together. The court found father to be the presumed father of L.N. (not of her three half-siblings) and granted him monitored visitation for a minimum of two hours a visit twice a week.

On May 4, father was arrested and incarcerated for possession of a deadly weapon and driving under the influence of "alcohol/drugs." While incarcerated, father was to have one visit per week with L.N.

On May 10, the children were placed in the home of L.N.'s paternal grandparents. L.N.'s paternal uncle (C.N.), his wife (T.N.), and their infant also lived there. About a week later, the paternal grandmother told the social worker that the family could not care for all four children because C.N. had obtained a job, all the adults (other than T.N.) would be working outside the home, and T.N. would be overwhelmed by caring for her infant and the other four children. The grandmother wanted the children to move out at the end of the school year in two or three weeks. In the event SSA had trouble finding homes for the children, the family was willing to care for L.N. and her next youngest sister.

At a June 4 team decision making meeting, the paternal grandfather and the paternal uncle, C.N., expressed their strong desire that only L.N. remain in their home. They felt that any "supportive services from Children and Family Services" would *not* be beneficial. Mother, L.N.'s two oldest sisters, and the CASA's of all four children felt the girls should stay together. Mother reported she was told by L.N.'s oldest sister "that the children were punished with objects, such as [a] back scratcher or fly swatter" at the

paternal grandparents' home. SSA reported the children were to remain in the paternal grandparents' home until June 17, the end of the school year.

On June 17, the paternal uncle (C.N.) brought the girls to Orangewood Children's Home. L.N. told the social worker "she would like to stay with her siblings at Orangewood Children's Home and didn't want to go back with" C.N. Nonetheless, SSA decided that L.N. was to stay at the paternal grandparents' home "until a home is found to take in all four children." C.N. "denied any physical abuse to the children and commented that he has seen [L.N.] take the back scratcher to hit other children." "He commented that the paternal grandfather did use it to play around with [L.N.] and believe[d] that the other children may have misinterpreted the paternal grandfather's intent."

L.N.'s oldest sister told the social worker that the paternal grandfather and another paternal uncle had threatened to hit the two oldest girls "with a back scratcher or a brown stick if they yell, play rough, or [for] not picking up things," but she "denied ever witnessing the children being hit." The second oldest girl reported C.N.'s wife, T.N., used a "chopstick to hit" L.N., but denied ever witnessing it. She also reported that once when the two youngest girls "were fighting over ice cream," and the second youngest girl said it was L.N.'s fault, T.N. grabbed that girl's arm. The second youngest girl reported "she got hit on the 'booties' with chopsticks and a back scratcher." She also claimed L.N. "got hit too, but then denied knowing where." L.N.'s CASA was concerned that L.N.'s caretakers were "not putting her in a car seat and [*sic*] the child's dental work"; the CASA had "provided the caretaker with a car seat on June 5, 2009."

Mother expressed her belief "that the paternal grandparents [had] wanted to take [L.N.] from her since 'day one.'" Mother did "not want her mail to go to [L.N.'s] paternal grandparents anymore, as she believe[d] that they would purposely throw it out."

L.N. visited father in jail. Father preferred to see L.N. "twice a month instead of once a week." He hoped to be released from jail in July or September.

At a July 17 hearing, mother asked the court to keep the siblings together. The court ordered SSA to prepare a report for the next hearing date “to address why [the] siblings should be separated.” Mother and father pleaded nolo contendere to the amended petition. The court sustained the amended petition and declared the children to be court dependents. The court ordered reunification services for mother and father, and scheduled a dispositional hearing for August 4 concerning “placement of children staying all together or not.”

On July 20, L.N.’s sisters (but not L.N.) were placed in a foster home. The social worker visited the three girls there and reported they “appeared to be healthy, comfortable in their surroundings, and appropriately dressed.” The social worker informed the foster mother that L.N. would be dropped off at the foster home to visit with mother and the sisters. The foster mother agreed to monitor mother’s visits with all four children. The foster mother “stated that she is able to take [L.N.] and her home is licensed. She was emotional when she expressed that in the event the parents failed to reunify with the children, she is willing to adopt all four.”

L.N. continued to live at the paternal grandparents’ home. The social worker visited L.N. there. L.N. “appeared to be healthy, content and appropriately dressed.” L.N. came out to the living room to sit by the social worker and whispered in her ear “that she would like to live with” her oldest sister and asked the social worker “not to tell anyone.” The social worker asked “if the child would like to live with the paternal grandparents, but the child indicated that she does not. However, the child commented that she is happy staying with the paternal grandparents.” A social worker from Orangewood Children’s Home reported she was notified by the CASA’s of L.N.’s sisters “that when they came back from visiting [L.N.] at the paternal grandparents’ home, the children were dirty and had not had anything to eat.”

SSA’s report for the disposition hearing presented “to the Court two sides of interests in regards to [L.N.’s] placement. On one side, [L.N.] would like to be placed

with her three older half-siblings. After all, the child has been in close contact and interaction with her siblings every day since infancy. Therefore, it is understandable that the child would like to have the continuous bond and relationship with her siblings. In addition, as the mother has portrayed, the children are currently separated from their parents, so all they have is each other. For that reason, the mother would like [L.N.] to be placed with her siblings, even if the placement is in foster care. On the contrary, [father], along with the paternal side of the family, would like the child to be placed with them, as they are family and as the paternal grandmother has expressed, the child needs [an] optimal level of attention and care that only her family could provide. The paternal grandparents and [the foster mother] have expressed that they are willing to keep the child long term, even adopting her if need be. However, it should be noted that the [foster mother] has expressed an interest [in] keeping all four children and will adopt all four, if needed. [¶] The current prognosis for this family is poor. The mother has yet to start on any of her services on a consistent basis, given she has more opportunity and time to do so than [father]. [Father] will not be released until September 2009 . . . . Until [father is] released, [he] will not fully participate in the Court ordered services; however, [he has] expressed motivation and willingness to work on the Court ordered case plan so that [he can] regain custody of [L.N.] as soon as possible. On that note, it appears that the children will continue to remain in out of home care for approximately six months or more before they could be assessed to go back to their parents' care. At this time, the only factor which warrants [L.N.] to continue to remain in the paternal grandparents' care versus her siblings is that [father] is capable of reunifying with her sooner than . . . mother could. [Father] has indicated that once he is released, he plans to be residing with the paternal grandparents, at which point, it would be appropriate to preserve [L.N.'s] current placement in the event she is reunified first with . . . father."

At the August 5 contested disposition hearing, L.N.'s oldest sister stated she wanted to be with L.N., L.N. wanted to be with her, and all four girls wanted to be

together. The oldest sister stated the foster home was safe and comfortable. The children's counsel stated that L.N.'s sisters wanted all four girls to be placed together.

SSA's counsel explained that the social worker did not "feel extremely strongly about this, [but did] feel that the situation should remain as it is currently," due to sections 361.2, subdivision (e), and 361.3 which require priority to be given to relative placement and because "change of placement . . . can be quite disruptive," as reflected in section 361.2, subdivision (f). The social worker did not see a current need to move L.N. from the grandparents' home, but also realized the children "do wish to be placed together."

Father's counsel agreed that L.N. should be kept in her current placement. L.N. was "used to" the paternal grandparents' home and comfortable and happy there. Additionally, father "would be in a better position to reunify with" L.N. if she continued to live with his parents. Also, "a significant age difference" existed between L.N. and her sisters so they could not "engage in the same types of activity."

Mother's counsel argued L.N. should be placed with her sisters, and noted section 16002 reflects a legislative intent "to maintain the continuity of the family unit." He stated that alleged abuse "by an extended non-relative" had occurred at the grandparents' home, "the paternal grandmother [had] indicate[d] she doesn't want siblings to visit," and L.N. had whispered in the social worker's ear "she wants to be with her siblings."

The children's counsel stated that the children wished "to be placed together," L.N. has "a different parent than the other three children," and section 361.3 seemed to "control right now." In light of unsubstantiated reports concerning the paternal grandparents' failure to provide a car seat and dental care for L.N., as well as the concerns of all the CASA's, counsel requested "progress reports to ensure [L.N.'s] safety" and health.

The CASA of the second youngest girl stated the girl does not “want to share a room with [L.N] because [L.N.] always got her in trouble” and then she would be “hit with a stick” at L.N.’s grandparents’ home.

The court stated it was “important to listen to what the children have to say” and noted the oldest sister was 14 years old and “not a little girl.” The court found abuse reports against the paternal grandparents to be “either unfounded or unsubstantiated.” The court was faced with “two competing approaches” — placing L.N. with family members, versus keeping the children together. The court ordered L.N.’s placement changed so she could “live with her three older sisters.” The court encouraged SSA “to set up all appropriate visitation with the grandparents.”

## DISCUSSION

### *The Court Did Not Abuse Its Discretion by Placing L.N. in a Foster Home With Her Half-Siblings*

Father contends the court committed reversible error by ordering that L.N. be removed from her paternal grandparents’ home and placed in a foster home with her half-siblings.

“The relative placement preference, codified in section 361.3, provides that whenever a new placement of a dependent child must be made, preferential consideration must be given to suitable relatives who request placement” (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 376) and who will fulfill the child’s reunification plan (§ 361.3, subd. (d)). “‘Preferential consideration’ means that the relative seeking placement shall be the first placement to be considered and investigated.” (§ 361.3, subd. (c)(1).) “Preferential consideration ‘does not create an evidentiary presumption in favor of a relative, but merely places the relative at the head of the line when the court is determining which placement is in the child’s best interests.’” (*In re Antonio G.*, at p. 376.) The social



worker and the court must give the relative seeking placement “a fair chance . . . .” (*Cesar v. Superior Court* (2001) 91 Cal.App.4th at p. 1033.) The court must decide whether a particular relative “placement is *appropriate*, taking into account the suitability of the relative’s home and the best interest of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321 (*Stephanie*).) Section 361.3 “helps meet ‘the requirement of Section 16000 . . . that a child live in the least restrictive and most familylike setting possible.’” (*In re Antonio G.*, at p. 377.) “If the court does not place the child with a relative who has been considered for placement . . . , the court shall state for the record the reasons placement with that relative was denied.” (§ 361.3, subd. (e).)

Section 361.3, subdivision (a) identifies factors that the social worker and the court must consider in “determining whether placement with a relative is appropriate.” The enumerated factors include, but are not limited to: (1) the child’s best interests; (2) the respective wishes of the parents, the relative, and the child; (3) Family Code section 7950 et. seq. regarding relative placement; (4) “[p]lacement of siblings and half siblings in the same home, if that placement is found to be in the best interest of each of the children as provided in Section 16002”; (5) “[t]he good moral character” of the relative and other adults living in the home, including whether any of them has committed child abuse or neglect; (6) “[t]he nature and duration of the relationship between the child and the relative, and the relative’s desire . . . to provide legal permanency for[] the child if reunification is unsuccessful”; (7) the relative’s ability to provide a safe, stable environment for the child; facilitate reunification with the parents; facilitate “visitation with the child’s other relatives”; and “[p]rovide legal permanence for the child if reunification fails”; and (8) “[t]he safety of the relative’s home.”

Similarly, section 361.2, subdivision (e) lists permissible placements for a removed child, including as the first two listed choices: “(1) The home of a noncustodial parent . . . .” (2) “The approved home of a relative.”

Under section 16002, “(a) [i]t is the intent of the Legislature to maintain the continuity of the family unit, and ensure the preservation and strengthening of the child’s family ties by ensuring that when siblings have been removed from their home, . . . the siblings will be placed in foster care together, unless it has been determined that placement together is not in the best interest of one or more siblings.” “(b) The responsible local agency shall make a diligent effort in all out-of-home placements of dependent children, including those with relatives, to develop and maintain sibling relationships. If siblings are not placed together in the same home, the social worker shall explain why the siblings are not placed together and what efforts he or she is making to place the siblings together or why those efforts are not appropriate. When placement of siblings together in the same home is not possible, diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child.”

Section 306.5 requires a social worker, “to the extent that it is practical and appropriate, [to] place the minor together with any siblings or half-siblings who are also detained or include in the report . . . a statement of his or her continuing efforts to place the siblings together or why those efforts are not appropriate.”

Family Code section 7950, subdivision (a) provides: “With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a placement in foster care is being made, the following considerations shall be used: [¶] (1) Placement shall, if possible, be made in the home of a relative, unless the placement would not be in the best interest of the child. . . . Before any child may be placed in long-term foster care, the court shall find that the agency or entity to which this subdivision applies has made diligent efforts to locate an appropriate relative and that each relative whose name has been submitted to

the agency or entity as a possible caretaker, either by himself or herself or by other persons, has been evaluated as an appropriate placement resource.”

Under Family Code section 7952, a “minor 10 years of age or older being considered for placement in a foster home has the right to make a brief statement to the court making a decision on placement. The court may disregard any preferences expressed by the minor.”

The abuse of discretion standard of review applies to a court’s custody determination in a dependency proceeding. (*Stephanie, supra*, 7 Cal.4th at p. 318.) ““When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*Id.* at p. 319.) ““Broad deference must be shown to the trial judge. The reviewing court should interfere only ““if we find that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did.””” (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.) If “substantial evidence supports the trial court’s order,” there is “no abuse of discretion.” (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.)

We turn to father’s contentions. He first argues that at “the dispositional stage of dependency proceedings, relative placement preferences outweigh sibling placement preferences when a parent’s interests in reunification are negatively impacted.” But father’s contention ignores mother’s equally important reunification interest. Mother seeks to reunify with her four daughters and therefore wishes them to live together as a family unit. Mother’s reunification interest is not served by L.N.’s placement with the paternal grandparents; in fact, there was evidence the grandparents have always wanted to take L.N. away from mother. And although the social worker stated father had the *potential* to reunify with L.N. sooner (once released from incarceration), the social worker also believed the prognosis for the family was poor. Thus, father’s argument that L.N.’s best interest is presumably served by “return to

parental custody” does not weigh in favor of either parent or either placement option (whether with the paternal grandparents or with the other three girls in the foster home).<sup>5</sup>

Father further argues that “the juvenile court went against the express recommendation of the social worker that such a move would be emotionally disruptive to” L.N. In fact, the social worker did not feel “extremely strongly” about the choice between the two placement options, recognizing they each presented advantages to L.N.

Similarly, father contends the children’s counsel “favored the application of the relative placement statute over any sibling preference.” In fact, the children’s counsel noted that her four clients all “very much want to be placed together” and that she had concerns about L.N.’s current placement, but felt that section 361.3 controlled.

Finally, father argues “that the chances of reunification between an errant parent and a child are much more likely if a child is placed with a committed and caring relative who has an interest in keeping the family, and extended family, together.” As discussed above, however, this argument considers only the interests of father and the paternal relatives, not L.N.’s ties to mother and L.N.’s sisters.

SSA and the court did comply with section 361.3, giving the paternal grandparents a fair chance and placing them at the front of the line for evaluation and investigation in determining which home served L.N.’s best interests. The four girls were placed with the paternal grandparents until the grandparents asked that L.N.’s sisters be moved out. After that point, SSA continued to assess and investigate the paternal grandparents’ home with respect to L.N.’s placement. At the disposition hearing, the court acknowledged the competing preferences between relatives and siblings. It expressly found any charges of child abuse against the grandparents were

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<sup>5</sup> Father contends he has “standing to challenge [L.N.’s] placement” because his chances of reunifying with his daughter are best served by her placement with his parents, yet argues (inconsistently) mother lacks “standing to argue the minors should be placed together.”

unsubstantiated, essentially finding their “home to be a suitable one.” (*Stephanie, supra*, 7 Cal.4th at pp. 321-322.) Nonetheless, the court in its discretion decided L.N.’s interests would be best served by placing her with her sisters. L.N. had spent most of her young life with her sisters, including years when the “family careened from one crisis to another, involving loss of housing; financial stress; medical emergencies; psychiatric issues . . . ; domestic strife between the [parents]; criminal activity; problems with rent, lost SSI checks, and missed doctor appointments; marginal food supply; extensive school absenteeism; and chronic hygiene concerns for the children.” It is not surprising that L.N. wished to live with her oldest sister, rather than with the paternal grandparents. The court did not abuse its discretion by placing L.N. with her sisters.

#### DISPOSITION

The postjudgment order is affirmed.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.